IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

COMPANY PETITION NO.111 OF 1998

Mr. Vijay Shenoy. ... Petitioner.

V/s.

Elar Fashion Ltd. ... Respondent.

....

Mr. A. Mohta i/b. Divya Shah Associates for the Petitioner.
None for the Respondent.

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CORAM : DR. D.Y.CHANDRACHUD,J.

10th April 2007.

P.C. :

. On or about 11th March 1996, the Petitioner advanced a short term loan of Rs.6 lakhs to the Company. The company issued a Demand Promissory Note on the same day agreeing to pay a sum of Rs.6 lakhs for value received. The Respondent issued a cheque dated 11th November 1996 drawn on the United Western Bank Limited. By way of an additional security, 1 lakh shares were also pledged with the Petitioner together with the transfer deeds. In

paragraph 8 of the Company Petition, it has been averred that though the transfer deeds were lodged with the Company, the Company did not transfer the shares to the Petitioner. The Company had remitted a cheque towards payment of interest upto 6th July 1996. A cheque in an amount of Rs.6 lakhs issued by the Company for the payment of the dues was presented to the Company's bankers but was not honoured on presentation. A further cheque issued on behalf of the Company in the amount of Rs.2 lakhs by the Managing Director on 20th May 1997 towards interest was also not honoured by the bankers. A statutory notice for winding up was issued on 13th December 1997. In a reply dated 20th December 1997, the defence of the Company was to the effect that the Petitioner had the security of the shares pledged.

2. An affidavit in reply was filed by the Company at the stage of admission in which the principal defence that was taken was that on 9th August 1996, the Petitioner had written a letter to the Company whereby the Petitioner sought a transfer of the shares pledged in his name. The defence is clearly

not bonafide for the reason that it is not in dispute that the shares were never transferred in the name of the Petitioner. The receipt of the short term loan from the Petitioner is not disputed. The execution of the demand promissory note and the issuance of a cheque of Rs.6 lakhs is not in dispute. The cheque was admittedly dishonoured on presentation.

3. The Company Petition was admitted on 18th December 1998. On 25th January 2007 directions were issued by S.C. Dharmadhikari, J, in the following terms in a batch of matters pertaining to the Respondent company :-

> " These matters are placed for directions before me because the learned Advocate appearing for the Petitioners point out that the proceedings before BIFR on a reference by the Respondent are concluded and the case has been dismissed. Shri Gawde states that, he has no instructions. His communications to

his clients are also not been responded by them. In such circumstances, he prays for a last chance to take instructions or to take such steps as are permissible under the rules for obtaining a discharge as an Advocate for the Respondent. At the request of Shri Gawde and as a last chance, S.O. for two weeks. Needless to state that if within a period of two weeks from today, no steps are taken, this Court shall presume that the BIFR proceedings are concluded and thereafter proceed with the hearing and final disposal of these petitions."

4. Counsel appearing on behalf of the Petitioner in this batch of Petitions placed on record an order passed by the BIFR on 19th June 2003 rejecting the reference made by the company as not maintainable.

5. The Company Petition has been duly advertised. An affidavit of service dated 28th April 1997 has been filed in this proceeding. The Company has no valid or tenable defence. Hence, an order of winding up shall have to be passed.

6. The Company Petition is accordingly made absolute in terms of prayer clauses (a) and (b).